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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT TACOMA

8 MARTIN STANLEY IVIE,

9 Petitioner,

10 v.

11 RON HAYNES,

12 Respondent.

No. 3:20-CV-5027-RJB-DWC

**ORDER ADOPTING REPORT AND
RECOMMENDATION**

13 This matter comes before the Court on the Report and Recommendation of Magistrate
14 Judge David W. Christel. Dkt. 33. The Court has considered the Report and Recommendation
15 (Dkt. 33), objections to the Report and Recommendation (Dkt. 34), and the remaining record.

16 Filed on November 25, 2020, the Report and Recommendation recommends that the
17 Petitioner's habeas corpus petition be denied because he failed to exhaust his state court
18 remedies, is procedurally barred from doing so, and did not show that his failures should be
19 excused. Dkt. 33. It recommends that a certificate of appealability should not issue. *Id.*

21 The Report and Recommendation (Dkt. 33) should be adopted, the petition denied, the
22 certificate of appealability should not issue, and this case should be dismissed. Petitioner's
23 objections do not dispute that he has failed to exhaust his state court remedies as to all of his
24 claims or that he is now procedurally barred from doing so. Dkt. 34. Instead, Petitioner argues
25 that he is excused from failing to exhaust his state court remedies because he is actually
26 innocent. Dkt. 34. He contends that the police deputies were never assaulted, the deputies'

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1 version of events are refuted by “all forensic facts in real evidence,” and that a juror has “sworn
2 that [he] is innocent.” *Id.* Petitioner then attaches several pleadings to his objections, including
3 previously filed declarations, a Traverse filed on August 27, 2020, and his own statement of the
4 events (also filed on August 27, 2020). *Id.* Petitioner also attaches objections (Dkt. 29), which
5 were filed in response to a prior Report and Recommendation (Dkt 28) in this case. *Id.*
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7 The Petitioner’s objections (Dkt. 34) to the instant Report and Recommendation (Dkt. 33)
8 do not provide grounds to reject it (Dkt. 33). His assertions of actual innocence are addressed in
9 the Report and Recommendation, along with majority of the attachments to his current
10 objections. The only remaining attachment - objections (Dkt. 29) filed regarding the previous
11 Report and Recommendation (Dkt. 28) - have already been considered and rejected by this
12 Court. The Petitioner has failed to show that he is actually innocent. The petition should be
13 denied, the certificate of appealability should be denied and the case dismissed.
14

15 It is **ORDERED** that:

- 16 (1) The Court **ADOPTS** the Report and Recommendation (Dkt. 33);
17 (2) The petition **IS DENIED**;
18 (3) A certificate of appealability **IS DENIED**; and
19 (4) This case **IS DISMISSED**.

20 The Clerk is directed to send copies of this Order to Petitioner, counsel for Respondent
21 and to the Hon. David W. Christel.
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23 **DATED** this 28th day of December, 2020.

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26 ROBERT J. BRYAN
United States District Judge